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## *Counsel for Amici Curiae Federal Courts Scholars*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

STATE OF CALIFORNIA, *et al.*,

Civil Action Nos. 4:19-cv-00872-HSG,  
4:19-cv-00892-HSG

**Plaintiffs,**

P.I. Hearing Date: May 17, 2019  
Time: 10:00AM

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

**CONSENT MOTION OF FEDERAL  
COURTS SCHOLARS FOR LEAVE TO  
FILE *AMICI CURIAE* BRIEF IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

### Defendants.

## SIERRA CLUB and SOUTHERN BORDER COMMUNITIES COALITION.

**Plaintiffs,**

V.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*

### Defendants.

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT federal courts scholars hereby respectfully move the  
 3 Court for leave to file a brief *amici curiae* in the above-captioned cases in support of Plaintiffs'  
 4 motions for a preliminary injunction. A copy of the proposed *amici curiae* brief is appended as an  
 5 exhibit to this motion.

6

7 **I. STANDARD FOR MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE***

8 District courts have discretion to permit third parties to participate in an action as *amici*  
 9 *curiae*, and courts have “exercised great liberality” in allowing *amicus* briefs. *Woodfin Suite*  
 10 *Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA, 2007 WL 81911, at \*3 (N.D. Cal. Jan. 9,  
 11 2007) (internal quotation marks and citations omitted). District courts frequently accept *amicus*  
 12 briefs from non-parties when the legal issues in a case “have potential ramifications beyond the  
 13 parties directly involved” or if the *amici* have “unique information or perspective that can help the  
 14 court.” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D.  
 15 Cal. 2005) (internal quotation marks and citations omitted). There are no strict prerequisites that  
 16 must be established to qualify for *amicus* status; the sole criterion is that the applicant make a  
 17 showing that its “participation is useful to or otherwise desirable to the court.” *Woodfin Suite*  
 18 *Hotels*, 2007 WL 81911, at \*3 (quoting *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D.  
 19 Cal. 1991)).

20

21 **II. STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE***

22

23 *Amici curiae* are federal courts scholars with expertise in the jurisdiction of the federal  
 24 courts. They are thus particularly well-suited to provide the Court with a detailed response to the  
 25 government’s argument that this Court cannot hear this case because Plaintiffs have not pointed to  
 26 an express statutory cause of action. *Amici* are:

- 1     • Erwin Chemerinsky, Dean, Jesse H. Choper Distinguished Professor of Law,  
2         University of California, Berkeley Law
- 3     • Michael C. Dorf, Robert S. Stevens Professor of Law, Cornell Law School
- 4     • David A. Strauss, Gerald Ratner Distinguished Service Professor of Law, Faculty  
5         Director of the Jenner & Block Supreme Court and Appellate Clinic, University of  
6         Chicago Law School
- 7     • Stephen I. Vladeck, A. Dalton Cross Professor in Law, University of Texas School  
of Law

8     **III. PROPOSED *AMICI CURIAE* BRIEF'S RELEVANCE AND AID TO THE COURT**

9         The proposed, attached *amici curiae* brief plainly satisfies this Court's standard for  
10 accepting such briefs because it offers a detailed response to one argument the government makes  
11 in its opposition to Plaintiffs' motion for a preliminary injunction in *Sierra Club v. Trump*, No.  
12 4:19-cv-00892-HSG. Specifically, the government argues that Plaintiffs "do not identify any  
13 private right of action in the statutes they challenge" or any other "cause of action" and therefore  
14 this Court should deny the motion. Gov't Opp. 12. As *amici* know, however, there is a long  
15 history of courts of equity hearing claims that executive branch officials have exceeded their  
16 statutory power, and the Supreme Court has repeatedly recognized that redressing such claims is  
17 within the equitable power of the federal courts. This case falls squarely within that legal tradition  
18 and within Supreme Court precedent.

21     **IV. POSITION OF THE PARTIES**

22         Counsel for all parties have consented to the filing of this brief.

1       **V. CONCLUSION**

2                  For the foregoing reasons, *amici* respectfully request this Court's leave to file the attached  
3 brief.

4  
5  
6 DATED: May 2, 2019

Respectfully submitted,

7                  /s/ Elizabeth B. Wydra  
8                  Elizabeth B. Wydra (Bar No. 218200)  
9                  Brianne J. Gorod  
10                 Brian R. Frazelle  
11                 Ashwin Phatak  
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